IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1568 OF 2006

Ratilal Manjibhai Patel ..Petitioner

Vs.

M/s. Crown Industries and anr. ..Respondents

Mr. A.M. Kulkarni for the petitioner.
Mr. Niranjan Mundargi i/by Sudatta Patil for respondent no.1.
Ms. S.V. Gajare, APP for respondent no.2-State.

CORAM: B.H. MARLAPALLE, J.

Date : July 02, 2007.

P.C.:

1. Heard Mr. Kulkarni the learned counsel for the petitioner who is the accused in S.C.C. No. 1729 of 2003 filed under Section 138 of the Negotiable Instruments Act. He had filed an application at Exh.14 in the said Case for recall of the process and on the ground that the complaint was not filed within the stipulated period of limitation from the date of receipt of the first notice. By an order dated

19/7/2005 the said application was rejected and, therefore, the petitioner filed Criminal Revision Application No. 135 of 2005 which also came to be dismissed by the learned Sessions Judge at Sangli on 5/12/2005. Hence this petition.

2. Mr. Kulkarni relied upon the decision in the case of Prem Chand Vijay Kumar vs. Yashpal Singh and anr. [(2205) 4 SCC 417] in which their Lordships stated that the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires and once a notice under clause (b) of Section 138 of the Act is received by the drawer of the cheque, the payee or holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account.

3. In the instant case the issue as to whether

the first notice was served or sought to be served by the postman on the accused will have to be decided on the basis of the evidence and more particularly the postman concerned has to step in the witness bax and merely on the avements made in para 2 of the complaint the process issued cannot be recalled at this stage.

4. Hence, there is no reason to cause interference in the view taken by the learned Sessions Judge.

5. Consequently, the petition fails and the same is hereby rejected summarily. However, all other contentions on merits of the respective parties are left open.

(B.H. Marlapalle,J.)